



# City of Portland, Oregon Bureau of Development Services Land Use Services

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**Date:** November 13, 2008 **To:** Interested Person

**From:** Crystal Hitchings, Land Use Services

503-823-7583 / Crystal.Hitchings@ci.portland.or.us

# NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-169842 AD

#### **GENERAL INFORMATION**

**Applicant:** Vitaliy S Kovalenko

26518 NE 34th St Camas, Wa 98607

Site Address: 1920 SE 47TH AVE

**Legal Description:** LOT 6 BLOCK 1, ROSSDALE

**Tax Account No.:** R729300060 **State ID No.:** 1S2E06CA 20500

**Quarter Section:** 3235

**Neighborhood:** Richmond, contact Douglas Klotz at 503-233-9161.

**Business District:** Division-Clinton Business Association, contact Katherine Cosgrove at

503-234-8585.

**District Coalition:** Southeast Uplift, contact Cece Hughley Noel at 503-232-0010.

**Zoning:** R5, Residential 5,000 **Case Type:** AD, Adjustment Review

**Procedure:** Type II, an administrative decision with appeal to the Adjustment

Committee.

#### Proposal:

The applicant is proposing to legalize an existing, non-conforming required parking space that is partially located within the front setback. The parking area measures 11 feet wide by 18 feet, 9 inches deep, and is located at a 9-inch setback from the front property line along SE 47<sup>th</sup> Avenue.

Zoning Code Section 33.266.120, Parking and Loading, Development Standards for Houses and Duplexes, states that required parking spaces are not allowed within the first 10 feet from a front property line, or within the front setback, whichever is greater. In this case, the front setback is 10 feet. Additionally, Section 33.266.120 states that a parking space must be at least 9 feet wide by 18 feet long. Therefore, the required parking space must be located 10 feet from the front property line and be 18 feet deep, for a total depth of 28 feet from the property line.

The constructed driveway is only 18 feet, 9 inches deep. Therefore, an Adjustment is required to allow the first 9 feet, 3 inches of the parking area to be located within the front setback.

NOTE: the Notice of Proposal incorrectly stated that the driveway is 20 feet, 9 inches deep, as was shown on the attached site plan, and that the portion of the parking space located within the front setback was 7 feet, 3 inches. The property line is actually located 2 feet behind the sidewalk, and not at the sidewalk, as was indicated on the submitted plan. Therefore, the portion of the proposed driveway that is actually located on the subject site is only 18 feet, 9 inches deep, and the actual length of the parking space located within the front setback is 9 feet, 3 inches.

## Relevant Approval Criteria:

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

#### ANALYSIS

**Site and Vicinity:** The 3,264 square foot site is developed with a 2,155 square foot 2 story home, originally built in 1913. The home is built in the Craftsman style and has a prominent covered front porch that extends across the entire front of the home. The site is characterized by an open, grassy front yard, a shrub border running along the south property line, and several mature trees along the south property line and in the rear yard. The site is accessed by an 11-foot wide concrete parking space and a concrete pedestrian stairway, located adjacent to the parking space, which provides a direct connection between the sidewalk on SE 47<sup>th</sup> and the main entrance of the home.

This portion of SE 47<sup>th</sup> is designated as a Local Service Access Street, and is developed on both the east and west sides with a 12-foot pedestrian corridor consisting of a 4-foot planting strip, 6-foot sidewalk, and additional 2-foot right-of-way behind the sidewalk.

Other development in the nearby neighborhood, within 200 feet of the subject site, is predominantly single-dwelling residential. Homes are 1 to 2 stories, built in the early 1900's in the Craftsman style, and are typically characterized by prominent front porches with large porch columns with deep eaves and decorative trim. The front yards of many homes in the area are slightly above the grade of the sidewalk and street. Some homes have tuck-under garages, and some have retaining walls rising up behind the sidewalk. Lots typically range in size from just under 3,000 square feet to just over 3,000 square feet. Although non-conforming parking spaces are not common in this area, there are a few sites in the nearby neighborhood with non-conforming parking spaces that are located in the front setback.

**Zoning:** The site and surrounding area is zoned R5, Single-dwelling Residential 5,000. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing. The R5 zone is a high density single-dwelling zone. The R5 zone allows attached and detached single-dwelling structures and duplexes. The R5 zone requires a front setback of 10 feet. Required parking areas area not allowed within the front setback.

In 2007, a zoning permit was issued (07-127336 ZP) to widen the parking space on the site (only 5 feet of the shared space was located on the subject site), and shift the curb cut slightly to the south and off of the adjacent lot to the north (the curb cut on the adjacent lot was closed). The zoning permit for this work has not been finalized because, upon final inspection, it was discovered that the constructed space was located within the front setback, and not 10 feet back, as was indicated on the site plan submitted for the permit. Therefore, an Adjustment would have to be approved in order for the permit to be finalized.

Land Use History: City records indicate that there are no prior land use reviews for this site.

**Agency Review:** A "Request for Response" was mailed on October 17, 2008. The following Bureaus have responded with no issues or concerns (Exhibits E.1-E.5):

- Site Development Section of BDS
- Fire Bureau
- Bureau of Environmental Services
- Water Bureau
- Bureau of Parks-Forestry Division

The following Bureaus submitted additional comments:

- The Life Safety Bureau (Exhibit E.6): provided required specifications for driving and parking surfaces, as outlined in City title 24.45.020.
- The Bureau of Transportation Engineering (Exhibit E.7): commented that the proposed parking pad of 18 feet, 9 inches deep provides adequate space for the majority of vehicles and exceeds the minimum depth for a parking space, and stated that no significant impacts are expected.

**Neighborhood Review:** A "Notice of Proposal in Your Neighborhood" was mailed on October 17, 2008. A total of two written responses were received, one from a notified property owner and one from the Richmond Neighborhood Association. This response from the nearby neighbor expressed general support of the proposal. The response from the Neighborhood Association stated that, although they are typically opposed to parking in the front setback, they will not oppose this particular case due to their understanding that BDS practices or policies may have contributed to the construction of the illegal parking arrangement.

# ZONING CODE APPROVAL CRITERIA

# 33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

# 33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below have been met.

**A.** Granting the adjustment will equally or better meet the <u>purpose</u> of the regulation to be modified; and

**Findings:** The applicant is requesting an Adjustment to **Section 33.266.120**, Development Standards for Houses and Duplexes. The purpose statement for this regulation is as follows:

<u>Purpose</u>: The size and placement of vehicle parking areas are regulated in order to enhance the appearance of neighborhoods.

At 11 feet wide, the proposed parking space is just slightly wider than the minimum allowed width of 9 feet, and at 18 feet, is the minimum allowed depth. The paved area of the front

yard does not exceed the 40% maximum allowance for paved vehicle area. Therefore the size of the parking space is not excessive and does not detract from the neighborhood. However, the parking space is located at a 9 inch setback from the front property line, rather than at the required 10 foot setback. The parking setback was established to enhance the appearance of front yards in residential neighborhoods. Therefore, the placement of the parking space in the front setback and whether or not that placement enhances or detracts from the appearance of the neighborhood is the issue to consider under this review criterion.

Historically, the subject site and the adjacent site to the north shared a single driveway that was located between the two sites and which provided access to a parking area located at the rear of each home. Approximately 20 years ago, according to the applicant, a wooden fence was erected at the shared property line by the adjacent property owner to the north, cutting off vehicle access to the rear of either lot. The adjacent lot to the north now has a tuck-under garage located at the front of the site. Ever since the fence was erected and vehicle access to the rear of the site was blocked, parking on the subject site has occurred on the remaining portion of the shared driveway, straddling the common side property line in front of the neighbor's fence and within the front setback. The new driveway is in this same location in relation to the front setback as it has been for the past 20 years. However, the new driveway is shifted approximately 5 feet to the south and now allows a vehicle to park fully on the subject site, rather than straddling the property line. Therefore, the appearance of the site and the neighborhood, is not greatly changed or detracted from by the new parking location.

Approximately half of the new parking space extends across the front of the home, but ends at the edge of the staircase that leads to the front porch. The concrete steps leading up from the sidewalk into the site are in direct line with the steps leading up onto the porch and to the main entrance of the home. The front yard of the subject site is approximately 2-3 feet above the grade of the sidewalk and street. The main entrance to the home is another 3-4 feet above the grade of the front yard, approximately at eye level from the sidewalk, and is raised somewhat above the height of a vehicle. Therefore, views of the front door and most of the street-facing facade of the home will not be obstructed by parked vehicles. Views into the site and toward the main entrance of the home, as seen looking north from SE 47th Avenue, are not obstructed by vehicles parked in the new driveway. Views from this direction include the open, grassy front yard, the pedestrian entrance, and the full streetfacing facade of the home. Views into the site and toward the main entrance, as seen looking south from SE 47th Avenue, will include a parked vehicle that may partially block views of the landscaped front setback and the front steps from this direction. The front porch extends across the entire façade of the home and is emphasized by columns and decorative trim, thus emphasizing the home and the main entrance as viewed from the street and sidewalk. Because the parked vehicle does not dominate views of the home and main entrance, the appearance of the site, and therefore of the neighborhood, is not detracted from by the new parking location.

Parking spaces located in the front setback are not common in this neighborhood, although there are a few sites in the area which do have non-conforming parking setbacks. Therefore, the location of a parking space within the front setback on this site does not contribute to a larger pattern of non-conforming parking spaces, and thereby does not detract from the overall appearance of the neighborhood, which is generally characterized by sites with 10-foot parking setbacks.

For the reasons described above, the proposal does not detract from the existing appearance of the neighborhood. This criterion is met.

**B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

**Findings:** Issues that affect livability, such as privacy and safety, will not be affected by this proposal. Because the historic shared vehicle access to the rear of the lot was removed, the only remaining on-site parking option is within the front setback. This option has been utilized for approximately 20 years. The new parking space remains in the front setback, but moves parking fully onto the subject site. The new parking configuration is not a large departure from what has occurred on this site for the past 20 years, and will not significantly obstruct views into the site from the street or sidewalk. The street-facing façade and the front porch remain visually prominent and the main entrance to the home remains visible and accessible. For these reasons, the new parking space will not significantly detract from the appearance or livability of the neighborhood. This criterion is met.

**C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

**Findings:** Only one adjustment is requested. This criterion is not applicable.

**D.** City-designated scenic resources and historic resources are preserved; and

**Findings:** City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

**E.** Any impacts resulting from the adjustment are mitigated to the extent practical; and

**Findings:** The new parking space is minimal in size, is located in the same location in relation to the front setback as it has been for the past 20 years, and does not obstruct the main entrance. There are no discernible impacts that would result from granting the requested adjustment. This criterion is met.

**F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

**Findings:** The site is not within an environmental zone. This criterion is not applicable.

#### DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

## **CONCLUSIONS**

The livability and appearance of the neighborhood are not significantly affected by the driveway being located within the front setback. All approval criteria are met, and this Adjustment should be approved.

#### ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code **Section 33.266.120**, Development Standards for Houses and Duplexes, to allow the first 9 feet, 3 inches of the parking area to be located within the front setback, per the approved site plan, Exhibits C-1, signed and dated November 10, 2008, subject to the following condition:

A. The applicant must submit to the Bureau of Development Services revisions to issued zoning permit #07-127336 ZP. The revisions must include the site plan approved by this Adjustment, Exhibit C.1. As part of the zoning permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 08-169842 AD."

Decision rendered by:

on November 10, 2008

By authority of the Director of the Bureau of Development Services

Decision mailed: November 13, 2008

Staff Planner: Crystal Hitchings

**About this Decision.** This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on October 13, 2008, and was determined to be complete on October 15, 2008.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on October 13, 2008.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period.

#### Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

**Conditions of Approval.** If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**Appealing this decision.** This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on November 28, 2008** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth

floor. **An appeal fee of \$250 will be charged**. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at <a href="https://www.portlandonline.com">www.portlandonline.com</a>.

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

#### Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

Unless appealed, The final decision may be recorded on or after December 1, 2008 – (the day following the last day to appeal). A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034 For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

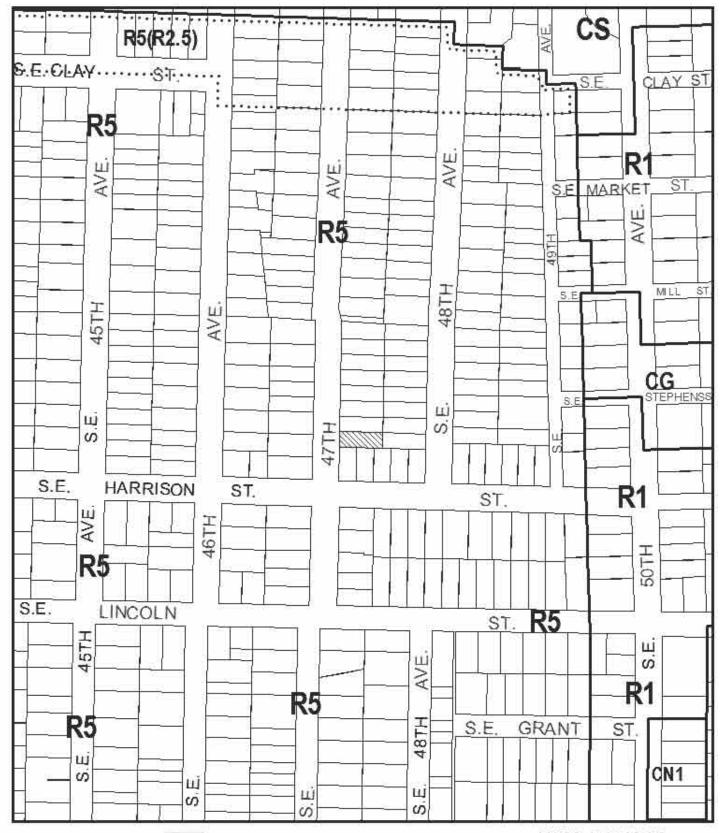
**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

#### **EXHIBITS**

#### NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Site and vicinity photos (from applicant)
  - 3. Site photos (from Google Maps)
  - 4. Site and vicinity photos (from staff)
  - 5. Vehicle parking location, past 20 years
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Fire Bureau
  - 2. Bureau of Environmental Services
  - 3. Site Development Review Section of BDS
  - 4. Water Bureau
  - 5. Bureau of Parks, Forestry Division
  - 6. Life Safety Bureau
  - 7. Bureau of Transportation Engineering and Development Review
- F. Correspondence:
  - 1. Lane Johnson; October 26, 2008; general support of proposal
  - 2. Doug Klotz, Chair, Richmond Neighborhood Association Land Use Committee; November 5, 2008; no opposition to this specific proposal
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. Comments from TRACS regarding 07-127336 ZP
  - 4. Original site plan submitted for 07-127336 ZP



ZONING

Site

File No. <u>LU 08-169842 AD</u> 1/4 Section <u>3235</u>

Scale 1 inch = 200 feet State Id 1S2E06CA 20500

Exhibit B (0 ct 15,2008)



